

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEAN MARC VAN DEN HEUVEL,

Plaintiff,

v.

MICHAEL FRAIL,

Defendant.

No. 2:22-cv-02277-DAD-KJN (PS)

FINDINGS AND RECOMMENDATIONS TO  
DISMISS

Plaintiff, who is proceeding without counsel in this action, was granted leave to proceed in forma pauperis (“IFP”) on June 30, 2023.<sup>1</sup> (ECF No. 9.) The court reviewed plaintiff’s complaint, but found that it required dismissal as it failed to state a cognizable claim for relief. (*Id.* at 5.) The court provided plaintiff the pleading standards under Federal Rule of Civil Procedure 8 and 42 U.S.C. § 1983. (*Id.* at 2-4.) Plaintiff was granted leave to file a first amended complaint or a notice of voluntary dismissal within thirty days and was cautioned that failure to comply with the court’s order would result in a recommendation that the action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b). (*Id.* at 6.)

On July 17, 2023 and July 28, 2023 plaintiff filed additional documents with this court. (ECF Nos. 10 and 11.) Although the court construes these filings broadly, neither filing states a

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<sup>1</sup> Actions where a party proceeds without counsel are referred to a magistrate judge pursuant to E.D. Cal. L.R. 302(c)(21). *See* 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72.

1 claim for a relief and thus plaintiff has failed to correct the defects identified in the court's June  
2 30, 2023 order.

3 In light of plaintiff's failure to cure the defects identified in this court's prior order, the  
4 undersigned finds that granting further leave to amend would be futile. Hartmann v. CDCR, 707  
5 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny leave to amend when amendment  
6 would be futile."). Accordingly, the court hereby recommends dismissal of this action with  
7 prejudice.


8 **FINDINGS AND RECOMMENDATIONS**

9 Accordingly, IT IS RECOMMENDED that:

- 10 1. This action be DISMISSED WITH PREJUDICE; and  
11 2. The Clerk of Court be directed to CLOSE this case.

12 These findings and recommendations are submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
14 days after being served with these findings and recommendations, plaintiff may file written  
15 objections with the court. Such a document should be captioned "Objections to Magistrate  
16 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections  
17 within the specified time may waive the right to appeal the District Court's order. Turner v.  
18 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir.  
19 1991).

20 Dated: November 7, 2023

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22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE

24 2277.vand  
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